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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/995,087	11/27/2001	Paul Michael Dantzig	YOR920010320US1	9571

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EXAMINER

NAWAZ, ASAD M

ART UNIT	PAPER NUMBER
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2155

MAIL DATE	DELIVERY MODE
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04/18/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/995,087	Applicant(s) DANTZIG ET AL.	
	Examiner ASAD M. NAWAZ	Art Unit 2155	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 January 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is responsive to the amendment received 1/7/08. No claims have been amended, added, or canceled. Accordingly, claims 1-42 are pending.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 4-5, 10-11, 14-15, 17, 20-23, 26-28, 31-32, 35-36, and 40-42 are rejected for being anticipated under 35 U.S.C. 102(e) as being anticipated by Nepustil (USPAT: 6,240,454) further in view of Bhanot et al (USPAT 5,796,934).

As to claim 1, Nepustil teaches a method in a network comprising a primary server and a plurality of offload servers, for dynamic offloading of processing requests from said primary server to any one of said plurality of offload servers, the method comprising the steps of:

determining a load on said primary server, if the load on said primary server is less than a first threshold, serving processing requests at said primary server (figs 4 and 5, col 2, lines 2-4 and 50-56; col 5, lines 14-25)

and only if the load on said primary server exceeds said first threshold, then offloading at least a portion of said processing requests to any one of said plurality of offload servers (col 1, lines 60-67; col 2, lines 56-63; col 5, lines 14-25)

wherein all of said plurality of offload servers are configured to process said processing request (col 1, line 60 to col 3, line 10).

However Nepustil does not explicitly indicate that the offload server only handles s the portion of said processing requests.

Bhanot teaches the offload server only handles s the portion of said processing requests (abstract). It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the teachings of Bhanot into those of Nepustil to make the system more fault tolerant. Allowing a backup server to only process tasks the primary server cannot handle without doing extra work will ensure that the extra work will not cause the backup server to become unavailable.

Claims 11, 21-23, 32, 41, and 42 are essentially the method, program product, and system for the claim above. They further contain similar limitations as the claim above and thus are rejected under similar rationale

As to claim 4, Nepustil teaches the method of claim 1 wherein serving the processing requests at said primary server includes returning a page to a user wherein all the embedded objects in the page have links to said primary server; and offloading at least a portion of the processing request to any one of said servers includes serving a base page at said primary server in which the links for embedded objects point to any one of said plurality of servers. (col 2, lines 47-67)

Claims 14, 26, and 35 are essentially the method, program product, and system for the claim above. They further contain similar limitations as the claim above and thus are rejected under similar rationale.

As to claim 5, Nepustil teaches the method of claim 1 wherein offloading at least a portion of the processing requests to said at least one offload server includes routing an incoming Web request to a selected offload server. (col 2, lines 47-67; col 5, lines 14-25)

Claims 15, 27, and 36 are essentially the method, program product, and system for the claim above. They further contain similar limitations as the claim above and thus are rejected under similar rationale.

As to claim 10, Nepustil teaches the method of claim 1 wherein the determination of which of said at least one offload server that at least one processing request is to be offloaded to is based on one or more of a group including a client identity, a client gateway (IP) address, a price of the offload service, or a current or previous load on the at least one offload server. (col 2, lines 20-46)

Claims 17, 20, 28, 31, and 40 are essentially the method, program product, and system for the claim above. They further contain similar limitations as the claim above and thus are rejected under similar rationale.

4. Claims 2-3, 6-7, 12-13, 16, 24-25, 29, 33-34, and 37-39 rejected under 35 U.S.C. 103(a) as being unpatentable over Nepustil and Bhanot further in view of Swildens et al (USPAT: 6,694,358)..

As to claim 2, Nepustil teaches the method of claim 1 however does not explicitly indicate wherein said load comprises bandwidth utilization and said first threshold is a network bandwidth utilization of said primary server.

Swildens et al teach the method wherein said load comprises bandwidth utilization and said first threshold is a network bandwidth utilization of said primary server. (Col 4, lines 1-4; col 5, lines 1-6 and 34-40; col 8, lines 18-48)

It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the teachings of Swildens into those of Nepustil to make the system more efficient. Basing the offloading of work to a secondary server on numerous criteria allows the system to work in an optimal state.

Claims 12, 24 and 33 are essentially the method, program product, and system for the claim above. They further contain similar limitations as the claim above and thus are rejected under similar rationale.

As to claim 3, Nepustil teaches the method of claim 1 however does not explicitly indicate wherein the said load comprises CPU utilization and said first threshold is a CPU utilization of said primary server. Swildens teaches the method wherein the said load comprises CPU utilization and said first threshold is a CPU utilization of said primary server. (col 5, lines 10-15; col 8, lines 18-48)

It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the teachings of Swildens into those of Nepustil to make the system more efficient. Basing the offloading of work to a secondary server on numerous criteria allows the system to work in an optimal state.

Claims 13, 25, and 34 are essentially the method, program product, and system for the claim above. They further contain similar limitations as the claim above and thus are rejected under similar rationale.

As to claim 6, Nepustil teaches the method of claim 1 but does not explicitly indicate throttling the request based upon another threshold. Swildens teaches the method including the step of, if the processing load on said primary server exceeds a second threshold, throttling at least one processing request. (col 9, lines 25-30; col 12, lines 3-36)

It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the teachings of Swildens into those of Nepustil to make the system more efficient. By throttling and dropping requests when a load is too burdensome to even offload to a secondary server, the system can increase efficiency by offload the burden to the requesting clients by simple indicating the server is busy and to try again.

Claims 16 and 37 are essentially the method, program product, and system for the claim above. They further contain similar limitations as the claim above and thus are rejected under similar rationale.

As to claim 7, Nepustil teaches the method of claim 6 however does not explicitly indicate throttling a request based upon a second threshold. Swildens teaches the method wherein throttling at least one processing request includes returning a page to a user indicating that a server is overloaded. (col 9, lines 25-30; col 12, lines 3-36)

It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the teachings of Swildens into those of Nepustil to make the system more efficient. By throttling and dropping requests when a load is too burdensome to even offload to a secondary server, the system can increase efficiency

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by offload the burden to the requesting clients by simple indicating the server is busy and to try again.

Claims 29, and 38-39 are essentially the method, program product, and system for the claim above. They further contain similar limitations as the claim above and thus are rejected under similar rationale.

5. Claims 8-9, 18-19, and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nepustil Bhanot and Swildens further in view of Gupta et al (US Patent No 6,374,305).

As to claim 8, Nepustil and Swildens teach the method of claim 6 but does not explicitly indicate dropping at least one processing request without returning any information to a user.

Gupta et al teaches requests being dropped if they reach a certain threshold without returning any additional information.(col 3, lines 9-20)

It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the teachings of Gupta into those of Nepustil and Swildens to make the system more efficient. By dropping requests that exceed previously set thresholds, the system no longer wastes server/processing time or other network resources in sending a message.

Claims 18 and 30 are essentially the method, program product, and system for the claim above. They further contain similar limitations as the claim above and thus are rejected under similar rationale.

As to claim 9, Nepustil and Swildens teaches the method of claim 6 wherein throttling at least one processing request includes returning a page to a user indicating that a server is overloaded if said load exceeds said second threshold but does not explicitly indicate dropping said at least one processing request if said load exceeds a threshold.

Gupta et al teaches requests being dropped if they reach a certain threshold without returning any additional information.(col 3, lines 9-20)

It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the teachings of Gupta into those of Nepustil and Swildens to make the system more efficient. By dropping requests that exceed previously set thresholds, the system no longer wastes server/processing time or other network resources in sending a message.

Claim 19 is essentially the method, program product, and system for the claim above. They further contain similar limitations as the claim above and thus are rejected under similar rationale.

6. When reviewing a reference the applicants should remember that not only the specific teachings of a reference but also reasonable inferences which the artisan would have logically drawn therefrom may be properly evaluated in formulating a rejection. In re Preda, 401 F. 2d 825, 159 USPQ 342 (CCPA 1968) and In re Shepard, 319 F. 2d 194, 138 USPQ 148 (CCPA 1963). Skill in the art is presumed. In re Sovish, 769 F. 2d 738, 226 USPQ 771 (Fed. Cir. 1985). Furthermore, artisans must be presumed to know something about the art apart from what the references disclose. In re Jac0by, 309 F.

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2d 513, 135 USPQ 317 (CCPA 1962). The conclusion of obviousness may be made from common knowledge and common sense of a person of ordinary skill in the art without any specific hint or suggestion in a particular reference. In re Bozek, 416 F.2d 1385, 163 USPQ 545 (CCPA 1969). Every reference relies to some extent on knowledge of persons skilled in the art to complement that is disclosed therein. In re Bode, 550 F. 2d 656, 193 USPQ 12 (CCPA 1977).

Response to Arguments

7. Applicant's arguments filed have been fully considered but they are not persuasive. In substance, the applicant argues that a) the prior art does not teach the offloaded at least a portion of said processing request is the only work handled by the plurality of offload servers and b) Nepustil teaches away from Bhanot and is thus not a proper combination.

In response to a), it is important to understand the proper scope of claim limitations in its broadest reasonable interpretation. In this case, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. However, the use of the term "configured to" renders the scope of the claim indefinite because although the servers are configured to process..., they are not processing anything and any server can be configured to behave accordingly. Therefore, the prior art still meets the scope of the limitations as currently claimed.

In response to b), the examiner notes the differences between Nepustil and Bhanot. However, due to the deficiency of Nepustil, Bhanot was introduced. Both arts are directed to a similar field of endeavor, however, they take slightly different approaches. It has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992).

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Asad M. Nawaz whose telephone number is (571) 272-3988. The examiner can normally be reached on M-F 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saleh Najjar can be reached on (571) 272-4006. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AMN

/saleh najjar/
Supervisory Patent Examiner, Art Unit 2155

<i>Application Number</i> 	Application/Control No.	Applicant(s)/Patent under Reexamination	
	09/995,087	DANTZIG ET AL.	
	Examiner	Art Unit	
	ASAD M. NAWAZ	2155	